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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SANDRA KIRKMAN, CARLOS
ALANIZ, individually and successors-
in-interest to JOHN ALANIZ,
deceased,

Plaintiff,

vs.

STATE OF CALIFORNIA, RAMON
SILVA, and DOES 1-10, inclusive,

Defendants.

Case No. 2:23-cv-07532-DMG-SSC

Assigned to:
Hon. Dolly M. Gee

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' EX PARTE
APPLICATION FOR AN ORDER
SHORTENING TIME TO HEAR
MOTION TO WITHDRAW AS
COUNSEL**

PLAINTIFFS' OPPOSITION TO DEFENDANTS' EX PARTE APPLICATION
FOR AN ORDER SHORTENING TIME TO HEAR THEIR MOTION TO
WITHDRAW AS COUNSEL

I. INTRODUCTION

Plaintiffs hereby oppose Defendants' Ex Parte Application for an Order Shortening Time to Hear their Motion to Withdraw as Counsel on the grounds that (1) advancing the hearing would deprive Plaintiffs of the time permitted to oppose the Motion to Withdraw pursuant to Central District Local Rule 7-9 and this Court's Standing Order and (2) Plaintiffs' lead trial counsel, Mr. Galipo, will be unavailable between Monday, December 23, 2025, and Thursday, January 2, 2025. If this Court is able to grant Defendants' instant Ex Parte Application in a way that allows Plaintiffs to file their opposition Defendants' Motion to Withdraw up until December 13, 2024 (the date that Plaintiffs' opposition is currently due) *and* advances the hearing to a date occurring on or prior to Friday, December 20, 2024, so that Mr. Galipo can appear at the hearing, then and only then do Plaintiffs not oppose Defendants' instant Ex Parte Application.

II. BRIEF PROCEDURAL HISTORY

On November 27, 2024, Defendants filed an Ex Parte Application for an Order Granting Leave to File Documents Under Seal relating to their anticipated Motion to Withdraw. (Dkt. No. 44). On November 29, 2024, Plaintiffs filed an opposition to Defendants' Ex Parte Application for an Order Granting Leave to File Documents Under Seal. (Dkt. No. 46). Defendants filed their Motion to Withdraw and Request to Modify Scheduling Order on December 4, 2024. (Dkt. No. 48). Defendants filed their Motion to Withdraw as a regularly noticed motion with a hearing date of January 3, 2025, at 9:30 a.m. (Dkt. No. 48). Pursuant to Central District Local Rule 7-9, Plaintiffs' opposition to Defendants' Motion to Withdraw must be filed no later than December 13, 2024. Contrary to the assertions in Defendants' Ex Parte Application,

1 Plaintiffs have not yet filed their opposition to Defendants' Motion to Withdraw.
2 Plaintiffs intend to file an opposition to Defendants' Motion to Withdraw on
3 December 13, 2024.

4 III. LEGAL STANDARDS

5 A proper *ex parte* motion contains two distinct parts: "[t]he first part should
6 address only why the regular noticed motion procedures must be bypassed [and t]he
7 second part consists of papers identical to those that would be filed to initiate a
8 regular noticed motion." *Mission Power Eng'g Co. v. Continental Cas. Co.*, 883 F.
9 Supp. 488, 492 (C.D. Cal. 1995). The granting of *ex parte* relief requires an
10 evidentiary showing of good cause that: (1) "the moving party's cause will be
11 irreparably prejudiced if the underlying motion is heard according to regular noticed
12 motion procedures"; and (2) "the moving party is without fault in creating the crisis
13 that requires *ex parte* relief, or that the crisis occurred as a result of excusable
14 neglect." *Mission Power*, 883 F. Supp. at 492; *see, e.g., Azam v. Brown*, 714 F. App'x
15 663, 665 (9th Cir. 2017) (recognizing *Mission Power* as setting forth standard for *ex*
16 *parte* relief); *Erichsen v. Cnty. of Orange*, 677 F. App'x 379, 380 (9th Cir. 2017)
17 (mem.) (noting that appellants failed to meet threshold requirement for *ex parte* relief
18 by failing to establish that they were "without fault in creating the crisis that requires
19 *ex parte* relief" (quoting *Mission Power*, 883 F. Supp. at 492)).

20 Central District Local Rule 7-9 (Opposing Papers) states:

21 Each opposing party shall, not later than ten (10) days after service of the
22 motion in the instance of a new trial motion and not later than twenty-one
23 (21) days before the date designated for the hearing of the motion in all
24 other instances, serve upon all other parties and file with the Clerk either
25 (a) the evidence upon which the opposing party will rely in opposition to
26 the motion and a brief but complete memorandum which shall contain a
27 statement of all the reasons in opposition thereto and the points and
28 authorities upon which the opposing party will rely, or (b) a written
statement that that party will not oppose the motion. Evidence presented
in all opposing papers shall comply with the requirements of L.R. 7-6, 7-
7 and 7-8.

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2 **IV. ARGUMENT**

3 By way of their instant Ex Parte Application, Defendants now move this Court
4 to hear their Motion to Withdraw “as soon as possible.” In doing so, Defendants
5 essentially purport to turn their regularly noticed Motion to Withdraw into yet another
6 ex parte application. Defendants do not meet the requirements for requesting ex parte
7 relief. Defendants offer no information regarding why they are without fault for
8 creating this crisis themselves, such that this issue could not have been brought as a
9 regularly noticed motion. Indeed, Defendants *did* file their Motion to Withdraw as a
10 regular motion. This Court should not permit Defendants to circumvent the proper use
11 of an ex parte application by shortening this Court’s time to hear or Plaintiffs’ time to
12 oppose what was noticed as a regular motion. Nothing has changed since the time that
13 Defendants filed their Motion to Withdraw as a regular motion on December 4, 2024.
14 At the time that Defendants filed their Motion to Withdraw, they had the same desire
15 expressed in their instant Ex Parte Application—to have new counsel take over the
16 case as soon as possible. Furthermore, several of the instances that defense counsel
17 has raised as examples of evidence of a purported conflict existed prior to the motion
18 filing deadline, further evidencing that ex parte relief is not appropriate and the
19 hearing this matter should not be advanced.

20 In addition to contesting Defendants’ improper use of the ex parte procedure,
21 Plaintiffs oppose Defendants’ request for an order shortening time to the extent that
22 advancing the hearing date will deprive Plaintiffs of the time provided to file an
23 opposition pursuant to Central District Local Rule 7-9. This Court’s Standing Order
24 instructs that “Motions shall be filed in accordance with Local Rule 7.” (Dkt. No. 8).
25 Defendants now attempt to circumvent this Court’s Standing Order and the Local
26 Rules by relying on Federal Rules of Civil Procedure, Rule 6(c)(1)(c) to shorten
27 Plaintiffs’ time to oppose Defendants’ Motion to Withdraw and shorten this Court’s
28 time to prepare for the hearing. If this Court grants Defendants’ Ex Parte Application

1 for an Order Shortening Time and advances the hearing to a date that triggers
2 Plaintiffs' opposition to the Motion to Withdraw to be filed earlier than December 13,
3 2024, then Plaintiffs will be prejudiced by not having sufficient time to oppose
4 Defendants' Motion.

5 Plaintiffs further oppose Defendants' Ex Parte Application for an Order
6 Shortening Time to the extent that it contemplates the hearing on the Motion to
7 Withdraw to be advanced to a date between Monday, December 23, 2024, and
8 Thursday, January 2, 2025. Plaintiffs' lead trial counsel, Dale K. Galipo, intends to
9 appear on behalf of Plaintiffs at the January 3, 2025, hearing on the Motion to
10 Withdraw. Given the upcoming holiday season, Mr. Galipo will be unavailable
11 between December 21, 2024, and January 2, 2025. If this Court grants Defendants' Ex
12 Parte Application for an Order Shortening Time and advances the hearing to a date
13 when Mr. Galipo is unavailable, then Plaintiffs will be prejudiced by not having the
14 opportunity to have their lead trial counsel appear at the hearing.

15 The only way that granting Defendants' Ex Parte Application for an Order
16 Shortening Time will not result in prejudice to Plaintiffs is if this Court orders that (1)
17 Plaintiffs' opposition to Defendants' Motion to Withdraw remains due on December
18 13, 2024; and (2) this Court advances the hearing to a date occurring on or before
19 December 20, 2024. Accordingly, Plaintiffs oppose Defendants' Ex Parte Application
20 for an Order Shortening Time if granting the Ex Parte Application would result in (1)
21 Plaintiffs being required to file their opposition to the Motion to Withdraw prior to
22 December 13, 2024; and/or (2) the hearing being advanced to a date where Mr.
23 Galipo is unavailable. The available dates thus appear to fall between Monday,
24 December 16, 2024, and Friday, December 20, 2024, which would not allow this
25 Court a meaningful amount of time to review the Motion to Withdraw and opposition
26 thereto. Additionally, Defendants' arguments that advancing the hearing date by a
27 week or two would "allow new counsel to come into the case and get up to speed as
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1 quickly as possible to expedite the withdrawal as much as possible” are un compelling.
2 (Dkt. No. 50:8-9). Defendants’ argument that “[b]y advancing the hearing date on the
3 motion to withdraw. [sic] Defendants’ counsel anticipates that the records, files and
4 evidence will be able to be transferred prior to the end of the year, and prior to the
5 holiday period” also places an undue burden on this Court to rush a ruling on the
6 Motion.

7 **V. CONCLUSION**

8 For each of these reasons, Plaintiffs respectfully request that this Court DENY
9 Defendants’ Ex Parte Application for an Order Shortening Time.

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11 Dated: December 9, 2024

LAW OFFICES OF DALE K. GALIPO

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